

TAB 20

CAUSE NO. D-1-GN-20-004507

WC 4811 SOUTH CONGRESS, LLC	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	TRAVIS COUNTY, TEXAS
	§	
4811 SOCO, LP	§	
	§	
<i>Defendant.</i>	§	250 TH JUDICIAL DISTRICT

NONPARTY'S MOTION TO QUASH

Nonparty Bryan Hardeman files this motion to quash regarding Plaintiff WC 4811 South Congress, LLC's subpoena duces tecum and notice of deposition for Mr. Hardeman and in support thereof would respectfully show as follows:

I. MOTION TO QUASH

On Saturday, September 19, 2020, Mr. Hardeman was served with subpoena duces tecum and notice of intention to take oral deposition for nonparty Bryan Hardeman, issued by Plaintiff WC 4811 South Congress, LLC.¹ This notice stated the deposition would be held in six business days, on September 28, 2020.²

Mr. Hardeman objects to the time and place of the deposition. Mr. Hardeman and his counsel are not available on the noticed date due to preexisting conflicts. Pursuant to Rule 199.4 of the Texas Rules of Civil Procedure, the depositions noticed for September 28, 2020 is automatically quashed until this motion can be determined.

¹ See Plaintiff's Subpoena Duces Tecum and Notice of Intention to Take Oral Deposition [of Bryan Hardeman], attached as Exhibit A.

² *Id.*

Counsel for Mr. Hardeman is willing to work with counsel for Plaintiff to schedule the deposition at a mutually agreeable time and place in the next few weeks, subject to the Plaintiff's compliance with the Texas Rules of Civil Procedure.

Therefore, Mr. Hardeman respectfully request an order quashing the notice of deposition for Mr. Hardeman on September 28, 2020, and for any further relief which they may be justly entitled.

Dated: September 23, 2020

Respectfully submitted,

HOWRY BREEN & HERMAN, L.L.P.

A handwritten signature in black ink, appearing to read "Randy Howry", is written over a horizontal line.

Randy Howry

State Bar No. 10121690

rhowry@howrybreen.com

1900 Pearl Street

Austin, Texas 78705-5408

Tel. (512) 474-7300

Fax (512) 474-8557

Attorneys for Nonparty Bryan Hardeman

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was delivered on September 23, 2020, in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure, to the parties listed and in the manner indicated below.

Manfred Sternberg
manfred@msternberg.com
MANFRED STERNBERG & ASSOCIATES, PC
1700 Post Oak Blvd., Suite 600
Houston, Texas 77056
Tel. (713) 622-4300
Fax (800) 622-9899

- ☒ Electronic service
- ☐ In person
- ☐ Registered mail, return receipt requested
- ☐ Commercial delivery service
- ☐ Facsimile
- ☐ Electronic mail

*Attorney for Plaintiff WC 4811 South Congress,
LLC*

W. Stephen Benesh
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Attorneys for Defendant 4811 SoCo, LP

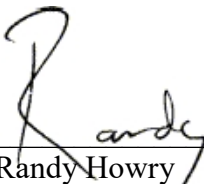

Randy Howry

EXHIBIT A

Delivered 09.19.2020
PSC#959
Authorized Person

CAUSE NO. D-1-GN-20-004507

WC 4811 SOUTH CONGRESS, LLC and
AFFILIATED COMMERCIAL
SERVICES, INC.

Plaintiffs,

v.

4811 SOCO LP, and
BANCORPSOUTH BANK
Defendant.

§ IN THE DISTRICT COURT
§
§ OF TRAVIS COUNTY,
§
§ TEXAS 250th JUDICIAL
§
§ DISTRICT
§
§

**SUBPOEANA DUCES TECUM AND NOTICE OF INTENTION TO TAKE ORAL
DEPOSITION**

State of Texas

TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS OR OTHER
PERSON AUTHORIZED TO SERVE AND EXECUTE SUBPOENAS AS PROVIDED IN
TEXAS RULE OF CIVIL PROCEDURE 176

YOU ARE HEREBY COMMANDED TO SUMMON Bryan Hardeman 6757 Airport Blvd;
Austin, Texas 78752 ; Home Address: Bryan Hardeman 2518 Matthews Dr. Austin, Texas 78703

pursuant to Rule 199.1 et seq. of the Texas Rules of Civil Procedure, and you are notified that
Plaintiff WC 4811 South Congress, LLC through its counsel, will take the deposition upon oral
examination of the above named individual on September 28, 2020, beginning at 10:00 a.m.
The persons designated must testify about information known or reasonable available to him and
shall produce and permit inspection its entire file for 4811 S. Congress in Austin, TX including
all contracts he has with any party directly relating to said real property.

This deposition will be taken before an officer authorized by law to take depositions and will

The deposition will be taken by remote video
will be recorded by videotape and stenographic
ording the topics attached in Exhibit A.

webcast to a remote location. The deposition will
link at <https://lexitas.zoom.us/j/94148730492>

2363

32-61/1110

September 18, 2020
date

eman

\$ 10⁰⁰

dollars

VOID AFTER 120 DAYS

IVP

GOVERNMENT-ISSUED IDENTIFICATION TO
NOTARY TO CONFIRM HIS/HER

**IDENTITY AT THE COMMENCEMENT OF THE DEPOSITION AND BEFORE
BEING SWORN.**

The appearances will be as follows;

Witness: Bryan Hardeman

Date: September 28, 2020, beginning at 10:00 a.m. CST.

Location of Witness: A location of witness' choosing that has Internet access.

This subpoena was issued at the request of the undersigned attorney.

MANFRED STERNBERG & ASSOCIATES, P.C.



September 18, 2020

Date

Manfred Sternberg
SBN: 19175775
1700 Post Oak Blvd. Suite 600
Houston, TX 77056
Telephone: (713) 622-4300
Facsimile: (713) 622-9899
Email: manfred@msternberg.com
COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 2020, a true and correct copy of the foregoing was forwarded via the Court's electronic filing service and e-mail to the following:

Christopher L.
Dodson Bracewell
LLP
711 Louisiana, Suite 2300
Houston, Texas 77002
Email: chris.dodson@bracewell.com

Mark Riley
Phone: (713) 822-8935
Email: Riley@Riley-CPA-Law.com

ATTORNEYS FOR DEFENDANTS



Manfred Sternberg

EXHIBIT A

From: Joseph Marburger <jmarburger@newquest.com>

Date: September 8, 2020 at 11:23:23 AM CDT

To: Joseph Marburger <jmarburger@newquest.com>

Cc: Brad LyBrand <blybrand@newquest.com>, Glenn Dickerson <gdickerson@newquest.com>

Subject: Development Opportunity South Congress

Hello-

I am reaching out on behalf of my partners Glenn Dickerson and Brad Lybrand. We have been working with a co-broker on the attached 14.94 acre site located at 4811 S. Congress in Austin, TX. We feel this site represents a prime opportunity for development. The site can be subdivided and the pricing guidance is \$60 psf. This site was previously owned by World Class Properties and the note has since been purchased by the current owner. The owner will allow for up to 12 months for due diligence and closing. Please let us know if you are interested or have any questions.

Happy to jump on a call and discuss in further detail.

Sincerely,

Joe Marburger

Associate

Office: 281.477.4306

Mobile: 713.897.1654

Email: jmarburger@newquest.com<<mailto:jmarburger@newquest.com>>

[cid:image001.png@01D66FE5.5901EA60]<<https://www.newquest.com/subscribe/>> [linkedin]

<<https://www.linkedin.com/company/newquest-properties/>> [Facebook]

<<https://www.facebook.com/NQProperties>> [YouTube]

<<https://www.youtube.com/channel/UCBt5ideQtGRgJOJUsGadR6w>>

[NewQuest Properties | newquest.com]

8827 W. Sam Houston Pkwy N. #200, Houston, TX 77040

OFFICER'S RETURN

hand this _____ day of _____, 20____, and executed by delivering a copy of this Subpoena and
ments to the within named witness: _____ this the
_____ day of _____, 20____, at _____ o'clock ____M. in person at
_____ in
_____ County, Texas, and tendered a fee of **\$10.00** to the witness in cash.

NOT EXECUTED to the within named witness for the following reason(s):

_____.

PROCESS SERVER, Cert# and Expiration

ACCEPTANCE OF SERVICE OF SUBPOENA
BY WITNESS UNDER RULE 176.5 T.R.C.P.

I hereby accept service of the attached subpoena and
will appear as instructed on said date and produce all
documents as requested in the subpoena

Service Fees:

Travel: _____/miles

Service: _____

Preparation Fee: _____

Witness Fee Tendered: **\$10.00**

Miscellaneous: _____

WITNESS

TOTAL: _____

ATTORNEY REQUESTING SUBPOENA:

Manfred Sternberg
MANFRED STERNBERG ASSOCIATES, PC
1700 Posk Oak Place, Suite 600
Houston, TX 77056
713.622.4300 Fax 713.622.9899
Attorney for Plaintiff
SBA # 19175775

Order No. 336598.006